

**ADVISORY OPINION NO. 97-26**

**Issued on August 7, 1997 by the**

**WEST VIRGINIA ETHICS COMMISSION**

**PUBLIC SERVANT SEEKING OPINION**

A Public Official

**OPINION SOUGHT**

1. Is it a violation of the Ethics Act if a public official owns an interest in a private Corporation which contracts to provide services to other companies that are regulated by his Agency?
2. Is it a violation of the Ethics Act if a public official works for a company that provides services to other companies regulated by his Agency?

**FACTS RELIED UPON BY THE COMMISSION**

1. The requester owns approximately 20% of a private Corporation which contracts to provide services to other companies in an industry which is regulated by his public Agency. He is one of five Directors of the Corporation and participates in its strategic planning. He does not perform any of the day to day activities which would require contact with the regulated companies.
2. The requester's spouse owns controlling interests in two Corporations which provide services to other companies in an industry which is regulated by his public Agency. He owns no stock personally in either Corporation. He has been employed as a consultant for the Corporations in the areas of strategic planning, financial investments, and developing or assisting in quality control for the Corporations. These activities would not require him to have contact with any company that may be regulated by his public Agency.

**PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION**

West Virginia Code 6B-2-5(h) provides, in pertinent part, that:

- (1) No full-time official or full-time public employee may seek employment with, be employed by, or seek to sell or lease real or personal property to any person who:
  - (A) Had a matter on which he or she took, or a subordinate is known to have taken, regulatory action within the preceding twelve months; or

(B) Has a matter before the agency to which he or she is working or a subordinate is known by him or her to be working.

(2) Within the meaning of this section, the term "employment" includes professional services and other services rendered by the public official or public employee, whether rendered as employee or as an independent contractor; "seek employment" includes responding to unsolicited offers of employment as well as any direct or indirect contact with a potential employer relating to the availability or conditions of employment in furtherance of obtaining employment; and "subordinate" includes only those agency personnel over whom the public servant has supervisory responsibility.

...

(4) A full-time public official or full-time public employee may not take personal regulatory action on a matter affecting a person by whom he or she is employed or with whom he or she is seeking employment or has an agreement concerning future employment.

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#### **ADVISORY OPINION**

1. Generally, the Ethics Act places no specific restrictions on a public servant having an ownership interest in a private company. However, in this instance, the requester owns a twenty percent (20%) interest in a Corporation which provides services to companies which he regulates in his public employment capacity. He is one of five Directors of the Corporation and participates in its strategic planning.

West Virginia Code 6B-2-5(h) provides that a full-time public servant may not seek employment with, be employed by, or seek to sell or lease real or personal property to any person who is regulated by that public servant or a subordinate.

A public servant's substantial ownership interest in a Corporation that seeks to conduct business with regulated companies is equivalent to that public servant personally taking such action. This is consistent with the Commission's holding in A.O. 96-32.

Therefore, it would be a violation of WV Code 6B-2-5(h) for the requester to maintain a 20% ownership interest in a private Corporation which contracts to provide services to companies that are regulated by his public Agency.

2. The Ethics Act does not regulate the spouses of public servants. Thus, there is no violation of the Ethics Act by virtue of a spouse's employment and/or ownership of Corporations which provide services to other companies that are regulated by the requester's agency.

A remaining question is whether the requester may serve as a paid consultant in the areas of strategic planning, financial investments, and developing or assisting in quality control for his spouse's Corporations. The requester's agency does not have regulatory authority over these Corporations. Consequently the Commission finds that he may accept paid employment with his spouse's Corporations provided the work is only for those Corporations and further provided he has no contact with those companies served by his spouse's Corporations.

  
Chairman